

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

CHARLES McKNIGHT

Plaintiff,

v.

**ILLINOIS CENTRAL RAILROAD
COMPANY, a corporation,**

Defendant.

Case No. 09-cv-201-DRH

MEMORANDUM & ORDER

HERNDON, Chief Judge:

Before the Court is defendant Illinois Central Railroad Company's Motion for Partial Summary Judgment (Doc. 71) and Motion for Partial Summary Judgment Regarding Brain Damage (Doc. 73). In the first Motion (Doc. 71), Defendant seeks summary judgment as to Plaintiff's claims for emotional and psychological injuries on the basis that Plaintiff's counsel had communicated to Defendant's counsel that his client was no longer wishing to pursue emotional or psychological damages in this case. Plaintiff did not file a Response to the Motion, but did, however, file a Motion to Withdraw an Element of Damages (Doc. 72), wherein Plaintiff asks the Court to grant him leave to withdraw any claim for emotional and psychological injuries as a basis for a separate claim of damages. Plaintiff's Motion (Doc. 72) was granted by the Court (Doc. 78) on February 18,

2010. Therefore, the Court **DENIES AS MOOT** Defendant's Motion for Partial Summary Judgment (Doc. 71) as to Plaintiff's claim for emotional and psychological damages.

Defendant's second Motion (Doc. 73) seeks summary judgment in its favor as to Plaintiff's claim of "brain damage." As with its first Motion, Defendant states that Plaintiff's counsel indicated to Defendant's counsel that his client does not have "brain damage" and that the claim for "brain damage" should be taken out of the Complaint. Plaintiff has not filed a Response. Therefore, pursuant to **LOCAL RULE 7.1(c)**, which states in part that "[f]ailure to timely file a response to a motion may, in the Court's discretion, be considered an admission of the merits of the motion," Defendant's Motion for Partial Summary Judgment Regarding Brain Damage (Doc. 73) is hereby **GRANTED**. Accordingly, partial summary judgment is entered in favor of Defendant and against Plaintiff as to Plaintiff's claim for "brain damage" in this matter.

IT IS SO ORDERED.

Signed this 26th day of April, 2010.

/s/ David R. Herndon

**Chief Judge
United States District Court**